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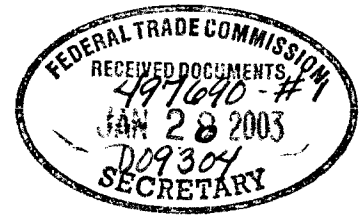
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January 28, 2003

Federal Trade Commission

Office of the Secretary

Room 159-H

600 Pennsylvania Avenue, N.W.

Washington, DC 20580

Via e-mail (consentagreement@ftc.gov)

RE: Proposed Consent Agreement *In the Matter of Quicken Loans Inc.*, Docket No. 9304

Dear Mr. Clark:

This comment letter concerns a proposed consent agreement between the Federal Trade Commission ("FTC") and Quicken Loans Inc. ("Quicken Loans"), to settle charges that Quicken Loans had violated Section 615(a) of the Fair Credit Reporting Act ("FCRA"). Notice of the proposed consent agreement was published in the January 21, 2003 Federal Register, and public comments are being accepted by the FTC in this matter until January

29, 2003. (See 68 Fed. Reg. 2775.)

My law practice includes representation of consumer financial services providers. However, I am submitting these comments in my personal capacity only, and not on behalf of any client.

Section 615 of the FCRA (15 USC Section 1681m) requires a creditor to provide a notice to a consumer when the creditor takes adverse action with respect to the consumer based on information obtained by the creditor about the consumer from a consumer credit report. A creditor's obligations under Section 615 depend on whether the creditor has taken "adverse action," as that term is defined in Section 603(k) of the FCRA (15 USC Section 1681a(k)).

Section 603(k)(1)(A) of the FCRA incorporates by reference the Equal Credit Opportunity Act's (and thus Federal Reserve Board Regulation B's) definition of "adverse action," to be used as the FCRA definition of "adverse action" whenever an adverse credit decision is made. (See, e.g., Informal FTC Staff Opinion Letter of June 28, 2001 by Laura D. Berger.) Outside of the credit context, Section 603(k)(1)(B)(i) and (ii) define "adverse action" for FCRA purposes in the insurance and employment contexts, respectively, and thus do not apply to the proposed Quicken Loans consent agreement. Section 603(k)(1)(B)(iii) defines "adverse action" for FCRA purposes in the context of certain licenses and other benefits granted by governmental instrumentalities, and therefore is also inapplicable to the proposed Quicken Loans consent agreement.

Section 603(k)(1)(B)(iv) of the FCRA defines "adverse action" to include certain additional actions or determinations, that fall outside the credit, insurance, employment, and governmental license/benefit contexts, but that are both "adverse to the interests of the consumer" and "made in connection with an application or a transaction that was initiated by, any consumer." The FTC appears to be applying Section 603(k)(1)(B)(iv) of the FCRA, and not Section 603(k)(1)(A) of the FCRA, in the pending Quicken Loans consent order. Official Staff Comment 5 to Regulation B, 12 CFR Section 202.9, indicates that a creditor would be subject to Regulation B adverse action notice requirements if the creditor evaluates prequalification or preapproval information provided by the consumer and any other related information, and "decides that it will not approve the [prequalification or preapproval] request and communicates that decision to the consumer. For example, if in reviewing a request for prequalification, a creditor tells the consumer that it would not approve an application for a mortgage because of a bankruptcy in the consumer's record, the creditor has denied an application for credit." (emphasis added)

Based on the FTC's factual allegations in the Quicken Loans case, it appears that Quicken Loans did not make any on-line decision to disapprove a consumer's preapproval request. The only "adverse" decision that was apparently made by Quicken Loans on-line and expressly communicated to certain consumers was a decision that certain consumers did

not qualify for an on-line preapproval decision, and would therefore have to proceed to an off-line preapproval process before any preapproval decision could be made. Whether a preapproval decision may be made entirely on-line, or must be made off-line following an initial on-line phase, may be of interest to consumers (due to the time-saving benefits of being able to obtain a preapproval decision entirely on-line), but the distinction between on-line and off-line preapproval decisioning does not, by itself, involve any decision about a consumer's eligibility for credit.

In view of the very precise parameters of Federal Reserve Board Regulation B's "adverse action" notice requirements in the area of loan prequalification and preapproval requests (see, e.g., Official Staff Comment 5 to 12 CFR Section 202.9), it is perhaps understandable that the FTC might want to use the non-credit definition of "adverse action" found in Section 603(k)(1)(B)(iv) of the FCRA for those loan prequalification or preapproval situations that fall completely outside the scope of Regulation B's "adverse action" notice requirements. A decision to not prequalify a person, even if it clearly falls outside the scope of Regulation B's "adverse action" notice requirements, is detrimental to the consumer (because the consumer has been deemed ineligible for the prequalification or preapproval service that the creditor has elected to market to the public), and if the detrimental decision was based on inaccurate, erroneous information in the consumer's credit report, there is arguably a public policy that would be served if the creditor were required to provide FCRA adverse action disclosures to the consumer in such cases (since this would help encourage the consumer to check his/her credit report for possible errors and inaccuracies).

However, there are many additional credit-related circumstances where a consumer might make a request of a creditor and be turned down, without triggering any requirement under Federal Reserve Board Regulation B for an "adverse action" notice. For example, a creditor's decision to decline a consumer's unilateral request for a favorable change in terms to an existing loan account (this could include, e.g., a request for a rate reduction or a fee waiver) does not constitute "adverse action" under Regulation B. See, e.g., Comment 2(c)(1)(i)-1 to Regulation B (which is deliberately limited to applications for refinancing of pre-existing credit, and applications for extensions of term to pre-existing credit), and Comment 2(c)(2)(iii)-2 to Regulation B (which is deliberately limited to applications for credit line increases, and deliberately does not apply to other consumer-requested changes to the terms of a pre-existing loan). (See also June 7, 1995 Federal Register, 60 Fed. Reg. 29965, 29966.)

In the case of an already-existing loan account, where the consumer is unilaterally requesting a favorable change to (or waiver of the enforcement of) the terms of the current contract governing the loan (such as a rate reduction or a fee waiver), there is typically no contractual or other legal requirement that the creditor agree to (or even entertain) such a unilateral request. Moreover, creditors typically do not publicize the availability of case-by-case rate reductions or fee waivers to their borrowers - in stark contrast to a loan preapproval service that is actively marketed to the public. A creditor's

decision to decline a consumer's unilateral request for a favorable change in terms to an existing loan account thus should not be considered "adverse" to the consumer's "interests" for purposes of Section 603(k)(1)(B)(iv)(II) of the FCRA, if the consumer borrower had no legal entitlement to request a rate reduction or fee waiver in the first place.

There is a major public policy distinction between using Section 603(k)(1)(B)(iv) of the FCRA to fill a prequalification/preapproval coverage "gap" in Regulation B (in an area that does not involve any adverse credit decision whatsoever, and that therefore does not trigger any "adverse action" notice requirement pursuant to Federal Reserve Board Regulation B), and using Section 603(k)(1)(B)(iv) to trigger the need for FCRA adverse action notices whenever a consumer borrower asks for any favorable change in terms to an existing, already-in-force, loan contract. In the latter case, it is appropriate to defer to the Federal Reserve Board's view that a denial of this type of consumer request does not constitute a denial of "credit." (The credit has already been extended, under terms and conditions set forth in the already-existing loan contract.) In addition, as noted earlier, the decision to not change the terms of the consumer's already-existing loan contract is also not "adverse" to the consumer's "interests", if the consumer had no legal entitlement to request a rate reduction or fee waiver. Thus, a creditor's decision to not change the terms of the consumer's already-existing loan contract should fall outside the scope of Section 603(k)(1)(B)(iv) of the FCRA.

If the proposed Quicken Loans consent agreement is to be finalized in substantially its present form, it would be extremely helpful to creditors if the FTC would expressly clarify that creditors may continue to rely on Federal Reserve Board Regulation B and its accompanying Official Staff Commentary to decide when an "application" for "credit" has been received, when an adverse credit decision has been made, and when "adverse action" for credit purposes has occurred, for purposes of both Sections 603(k)(1)(A) and 603(k)(1)(B)(iv) of the FCRA. It would also be very helpful if the FTC would expressly clarify that the Quicken Loans consent order is based on an application of Section 603(k)(1)(B)(iv) of the FCRA, and not Section 603(k)(1)(A), because the "adverse" action that was alleged to have occurred in the Quicken Loans matter was a determination that certain consumers could not be prequalified entirely on-line and would instead have to complete the prequalification process off-line.

I thank you in advance for the opportunity to present these comments. Please do not hesitate to contact me at (203) 776-1911 during regular business hours (Eastern Time) if you have any questions about this letter or would like any further information.

Sincerely,

/s/ Elizabeth C. Yen

Elizabeth C. Yen